

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 931

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO GOVERNMENTAL CONDUCT; LIMITING GIFTS TO CANDIDATES
FOR STATE OFFICE AND STATE OFFICERS AND EMPLOYEES AND THEIR
FAMILIES; PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Gift Act".

Section 2. DEFINITIONS.--As used in the Gift Act:

A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without
commensurate consideration of money, property, service, loan,
promise or any other thing of value, including food, lodging,
transportation and tickets for entertainment or sporting
events, but does not include:

(1) any activity, including but not limited to

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1 the acceptance of a donation, transfer or contribution, or the
2 making of an expenditure or reimbursement, that is authorized
3 by the Campaign Reporting Act or the Federal Election Campaign
4 Act of 1971, as amended;

5 (2) a gift given under circumstances that make
6 it clear that the gift is motivated by a familial relationship
7 rather than the recipient's position as a state officer or
8 employee or candidate for state office;

9 (3) compensation for services rendered or
10 capital invested that is:

11 (a) normal and reasonable in amount;

12 (b) commensurate with the value of the
13 service rendered or the magnitude of the risk taken on the
14 investment;

15 (c) in no way increased or enhanced by
16 reason of the recipient's position as a state officer or
17 employee or candidate for state office; and

18 (d) not otherwise prohibited by law;

19 (4) payment for a sale or lease of tangible or
20 intangible property that is commensurate with the value of the
21 services rendered and is in no way increased or enhanced by
22 reason of the recipient's position as a state officer or
23 employee or candidate for state office;

24 (5) a commercially reasonable loan made in the
25 ordinary course of the lender's business on terms that are

1 available to all similarly qualified borrowers;

2 (6) reimbursement for out-of-pocket expenses
3 actually incurred in the course of performing a service for the
4 person making the reimbursement;

5 (7) any gift accepted on behalf of and that
6 becomes the property of the state or a political subdivision of
7 the state;

8 (8) anything for which fair market value is
9 paid or reimbursed by the state officer or employee or
10 candidate for state office;

11 (9) reasonable expenses for a bona fide
12 educational program or other activities that are directly
13 related to the state officer's or employee's official duties;
14 provided that in case of the legislators, the program or
15 activity is approved by the New Mexico legislative council; or

16 (10) an educational scholarship or other grant
17 or award made in the ordinary course of the grantor's business
18 and that is available to all similarly qualified applicants;

19 C. "market value" means the retail cost a person
20 would incur to purchase a gift;

21 D. "restricted donor" means a person who:

22 (1) is or is seeking to be a party to any one
23 or any combination of sales, purchases, leases or contracts to,
24 from or with the agency in which the donee holds office or is
25 employed;

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1 (2) will personally be, or is the agent of a
2 person who will be, directly and substantially affected
3 financially by the performance or nonperformance of the donee's
4 official duty in a way that is greater than the effect on the
5 public generally or on a substantial class of persons to which
6 the person belongs as a member of a profession, occupation,
7 industry or region;

8 (3) is personally, or is the agent of a person
9 who is, the subject of or party to a matter that is pending
10 before a regulatory agency and over which the donee has
11 discretionary authority as part of the donee's official duties
12 or employment within the regulatory agency; or

13 (4) is a lobbyist or the lobbyist's employer
14 with respect to matters over which the donee may reasonably be
15 expected to act; and

16 E. "state officer or employee" means any person who
17 has been elected to, appointed to or hired for any state office
18 and who receives compensation in the form of salary or is
19 eligible for per diem or mileage.

20 Section 3. LIMITATION ON GIFTS.--

21 A. A state officer or employee or a candidate for
22 state office, or that person's family, shall not knowingly
23 accept from a restricted donor, and a restricted donor shall
24 not knowingly donate to a state officer or employee or a
25 candidate for state office, or that person's family, a gift of

1 a market value greater than two hundred fifty dollars (\$250).

2 B. A state officer or employee or a candidate for
3 state office, or that person's family, shall not accept from a
4 restricted donor, and a restricted donor shall not donate to a
5 state officer or employee or candidate for state office, or
6 that person's family, a gift of a market value greater than one
7 hundred dollars (\$100) during a legislative session.

8 C. A restricted donor shall not donate gifts of an
9 aggregate market value greater than one thousand dollars
10 (\$1,000) in a calendar year to any one state officer or
11 employee or to any one candidate for state office or to the
12 family of any one officer, employee or candidate.

13 D. A state officer or employee shall not solicit
14 gifts for a charity from a business or corporation regulated by
15 the state agency for which the state officer or employee works
16 and shall not otherwise solicit donations for a charity in such
17 a manner that it appears that the purpose of the donor in
18 making the gift is to influence the state officer or employee
19 in the performance of an official duty. An agent of a business
20 or corporation regulated by a state agency shall not donate to
21 a charity in response to a solicitation for that charity from a
22 state officer or employee of that state agency.

23 Section 4. PENALTIES.--A person who violates the
24 provisions of the Gift Act is guilty of a petty misdemeanor and
25 upon conviction shall be sentenced in accordance with the

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1 provisions of Section 31-19-1 NMSA 1978.

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